IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.806-DB of 1997
Date of decision: 01.05. 2007

Balwinder Singh and another.

-----Appellant.

Vs.

State of Punjab.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL

HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. C.M. Munjal, Advocate
for the appellants.

Mr. H.S. Brar, DAG, Punjab
for the respondent.

Adarsh Kumar Goel, J.

The appellants challenge their conviction under Section 302/34 IPC, for which, they have been sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/- each, in default, to undergo further RI for two year each. They have also been convicted under Section 449 IPC, for which, they have been sentenced to undergo RI for 10 years each and to pay fine of Rs.2,000/- each, in default, to further undergo RI for one year each.

The substantive sentences are to run concurrently.

Balwinder Kaur (PW-2) wife of Gurnam Singh, deceased, made the statement before Gurmeet Singh (PW-13), which led to lodging of FIR dated 28.4.1996 at 3.30 A.M. According to the said statement, Balwinder Kaur was married to the deceased Gurnam Singh 10 years back and had four children. They were residing in a house constructed in the fields along with children and parents of Gurnam Singh. At 10 P.M., the family members went to sleep. At 2.00 A.M., a report of fire shot was heard. When she called her husband, he mumbled. Her mother-in-law Joginder Kaur rushed towards them from the adjoining room. One more report of fire shot was heard. She and her mother-in-law raised an alarm. The person who was standing near the window ran away through the courtyard. He could be seen in the moonlit night. On hearing the cries of her husband, she and her mother-in-law put on the lights and found blood stains on his right arm and on the right side of the chest and found fire-arm injuries. After a short while, he died. She and her mother-in-law came out of the house and found that the Southern small door of the house was lying open. There was a land dispute with Harbhajan Singh, which was pending in the Court, on account of which, Harbhajan Singh and his sons Mohinder Singh and Harjinder Singh used to give threats to her husband that if he did not vacate the possession of the land, they will kill him. She and her family had suspicion that murder of Gurnam Singh was committed by Harbhajan Singh and his sons themselves or by hiring some other persons. She went to the house of Sukhchain Singh and narrated the occurrence to him and then she along with Sukhchain Singh went to

the police station to lodge the FIR. Gurmeet Singh (PW-13) accompanied Balwinder Kaur and Sukhchain Singh to the place of occurrence, prepared inquest report (Ex.PC) on the dead body of the deceased and sent the dead body for post-mortem examination to Civil Hospital, Zira. He inspected the place of occurrence and recovered pellets of 315 bore bullets. He also took into possession bloodstained portions of khes, chaddar and bedding apart from empty cartridges of 315 bore, one from near the window and the other from near the door. He also recovered one empty cartridge of .12 bore from the water tank. He lifted four moulds from the fields and prepared rough sketch plan. Amarjit Singh (PW-14), SHO arrested Balwinder Singh, ASI Jagroop Singh arrested Mohinder Singh, ASI Jastinder Singh arrested Lakhwinder Singh and ASI Raj Singh arrested Daulat, accused. Harbhajan Singh was arrested on 9.6.1996 and his moulds were taken into possession vide Ex.P-23. Amarjit Singh completed the investigation and sent up the accused for trial.

Harbhajan Singh, accused made confession before Baljit Singh (PW-9), Ex-Sarpanch, to the effect that he along with the co-accused committed the murder of Gurnam Singh, on account of land dispute. The appellant Harbhajan Singh also made similar confession before PW-8 Anoop Singh, Lamberdar.

PW-3 Dr. Rachhpal Singh conducted the post-mortem examination and found following injuries on the body:-

> "1. A lacerated wound with inverted margins 3.5 x 2 cm. was present on the back of the right fore-arm. 14 cm.

from the elbow joint. Abrasion collar was present on lower and outer margin. No blackening nor scorching and tattooing were present. Clotted blood was present.

2. A lacerated wound 6 cm. x 5 cm. in size. Margins of the wound were everted was present on the front of right fore-arm. 11 cm. from the elbow joint. Clotted blood was present.

On dissection of injury No.1 communicates with injury No.2 after lacerating the skin, soft tissues, fracturing both bones of fore-arm. Clotted blood was present on the track of wound.

3. A lacerated wound 1.75 cm x 1.75 cm. circular in shape was present on the right side of chest. 15 cm. from right nipple. Abrasion collar was present on the lower and outer margin. Clotted blood was present. It was 120 cm. above the right heel. It was present at 8 o'clock position from right nipple.

4. A lacerated wound 2 ½ cm x 2 cm with everted margins present on the back of the right side of chest. 2 cm. from the mid line at the level of ninth thoratic vertlbra. It was 123 c. from the right heel. Clotted blood was present.

On dissection, injury No.3 communicate with injury No.4 after lacerating the lateral chest wall from fracturing 7th rib and lacerating liver diaphrame, right plaura, right lung, posterial chest wall fractguring ninth rib. Clotted blood was present in the track of the wound. Right plural cavity contained 900 cc of flued and clotted blood.

5. A lacerated wound 3 x 2 ½ cm. oval in shape was present on the front of right side of chest. 5.5 cm. below the right nipple and 6.30 O'clock position. Margins were inverted. A circular abrasion collar 1.5 cm. width was present around the wound. Tattooing was present around the wound in a diameter of 12

c.m. No blackening no scorching was present. Clotted blood was present.

6. A punctured lacerated wound 0.5 cm x 0.25 cm was present with inverted margins. 1 cm below injury No.5. Clotted blood was present.

7. A punctured lacerated wound 0.5 cm x 0.25 cm. with inverted margins was present, 1 cm. above injury No.5. Clotted blood was present.

On dissection injuries No.5,6, 6 and opening the chest and abdominal cavity, injury No.6 penetrated into the liver after lacerating through the right anterior chest wall, right side of diaphragm and the liver. Clotted blood was present in the track. Injury No.7 penetrated into right plaural cavity after lacerating through anterior chest wall right plsure and right lung. Clotted blood was present in track. Inury No.5 penetrated with the right and left palural cavities, left ventricle chamber of heart, right and left lungs mediestinal structure and the abdominal cavity after lacerating, trasturing anterior chest wall 5th, 6th and 7th rib. Right plesure, right lung, pericardium and heard, left pleura, left lung fracture ofg 7th rib posteriorly. Both domes diaphrames, liver, stomach, and spleen, both pleural cavities right 900 cm and left 800 cc of fluid and clotted blood mixed with shettered tissues and the abdominal cavity contained 500 cc of fluid and clotted blood. 15 metalic pieces removed from the lung, heart, liver and spleen were packed in a plastic vial sealed, labeled and was handed over to the police.

Stomach contained 50 cc of semi digested food. The bladder contained 20 cc of urine.

All the injuries were ante mortem in nature. The cause of death in this case was laceration of both lungs, heart, liver

> (all vital organs) which were sufficient to cause death in the ordinary course of nature."

According to the report of Forensic Science Laboratory, impression of the mould of the foot (C-1) matched with foot of Balwinder Singh as per test mould (T-1). Mould of left foot (C-2) lifted from the scene of the crime matched with test impression of the left foot of Harbhajan Singh (T-2).

After considering the evidence on record, the trial Court convicted the appellants, but acquitted the co-accused Mohinder Singh, Lakhwinder Singh and Daulat.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants submitted that there was no direct evidence against the appellants and FIR was lodged on the basis of suspicion. Circumstantial evidence mainly comprises of extra-judicial confessions and footprints, which were both not conclusive. PW-8 Anoop Singh did not tell about the occurrence for 10-15 days while Baljit Singh (PW-9) was the Sarpanch of a different village i.e. Village Phemewala with whom the accused had no special relationship.

Reliance has been placed on judgments of the Hon'ble Supreme Court in ***Balbir Singh v. State of Punjab*** 1996 (3) RCR (Crl.) 515, wherein it was observed as under:-

> "10. Coming to the third circumstance, namely, footprints, this circumstance is although proved by the prosecution

but in our opinion it is very weak circumstance and on the basis of footprints it cannot be conclusively said that these footprints were of the accused. It may also be stated that only two footprints were found whereas there are two accused which means there ought to have been four footprints. There is no explanation whatsoever given by the prosecution in this behalf as also there is no positive evidence to indicate as to whose footprints they were. In our opinion the learned trial Judge was wrong in accepting this as a conclusive circumstance to establish the complicity of the accused in the crime.

11. Coming to the next circumstance, namely, recovery of amulet and rod pursuant to the statement made by the accused No.1 under Section 27 of the Indian Evidence Act, in our opinion this recovery is again a weak piece of evidence because there were no special identity marks on both of these articles. This circumstance, therefore, is not conclusive to prove the complicity of the accused.

12. Coming to the last circumstance, namely, extra judicial confession alleged to have been made by accused No.1, Balbir Singh to Pala Singh (PW.7), Municipal Commissioner, Fazilka, Municipal Committee, it has come on the record that this witness had no special friendship with either of the accused. Pala Singh (PW.7) in his evidence had vaguely stated that after about one and half month of the incident Balbir Singh, accused No.1 contacted him and in the presence of Sajjan Singh, accused No.2 confessed the crime. After going through the evidence of this witness, we are unable to accept his evidence as trustworthy. It may also be stated that as far as Sajjan Singh, accused No.2 is concerned, there is no evidence whatsoever to connect him with the crime."

Learned counsel for the State supported the conviction and sentence of the appellants.

There is no direct evidence and the case of the prosecution hinges on circumstantial evidence. Prosecution has relied upon following circumstances:-

(i) Motive of the accused on account of pending civil litigation.

(ii) Extra-judicial confession made by Harbhajan Singh before Baljit Singh (PW-9) and Anoop Singh (PW-8).

(iii) Comparison of moulds lifted from the place of occurrence vide Ex.P17 and compared with the footprints of the accused taken under orders of the Court vide memo Ex.P-22; Report Ex.P-28 to the effect that moulds (C-1 & C-2) lifted from the place of occurrence could be of accused Balwinder Singh and Harbhajan Singh.

(iv) Recovery of pellets vide Ex.P13, cartridges vide Ex.P-15 and P-16 and rifle vide memo Vide Ex.P-20; Report of the Forensic Science Laboratory Ex.P-26 that cartridges (Marks C-2 and C-3) were fired from .315 rifle No.78-2234;

It is well-settled that circumstances from which conclusion of guilt is to be drawn should be fully established and should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of conclusive nature and tendency. In other words, chain of evidence must be so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. If two views are possible, Court should adopt a view favourable to the accused. Reference may be made to the judgment

of the Hon'ble Supreme Court in ***Hanumant v. State of M.P.*** AIR 1952 SC 343. These principles have been reiterated inter-alia in ***Shivaji Sahabrao Bobade v. State of Maharashtra*** AIR 1973 SC 2622, ***Sharad B. Chand Sarda*** **v.** ***State of Maharashtra*** AIR 1984 SC 1622 and ***Harendra Narain Singh v. State of Bihar*** AIR 1991 SC 1842. As regards evidence of motive, the same could only raise suspicion and could not be conclusive of guilt by itself.

As regards extra judicial confession, the same is considered to be a weak evidence unless the witness before whom it was made, is reliable. PW-8 Anoop Singh, before whom extra-judicial confession was made, did not disclose the same and kept it concealed, which itself creates doubt about veracity of his version. He did not give any reason for remaining silent for 10-12 days. His statement was recorded for the first time on 11.5.1996 as stated by PW-13 Inspector Gurmeet Singh. PW-9 Baljit Singh deposed about extra-judicial confession by Harbhajan Singh. There were major improvements in his statement over the statement he made before the police. The evidence of extra-judicial confession is, thus, not acceptable.

Coming to the question of moulds, such evidence can only be accepted as corroborative evidence to reinforce conclusions about identity of a culprit if there is other evidence about the same. Reference may be made to judgment of Hon'ble Supreme Court in ***Mohd. Aman v. State of Rajasthan*** AIR 1997 SC 2960 (Para 9).

As regards recovery of weapon and cartridges, the said evidence is also hardly satisfactory. According to the affidavit of Daljit

Singh (Ex.P-24), parcel of cartridges was handed over to him only on 3.5.1996. In any case, by itself the said evidence is not enough to implicate the appellants.

The above evidence does not, thus, meet the tests laid down for conviction of person on the basis of circumstantial evidence.

Accordingly, we are of the view that conviction of the appellants on the basis of evidence on record is not called for and they are entitled to benefit of doubt.

The appeal is allowed, the conviction and sentence of the appellants are set-aside and they are acquitted.

(ADARSH KUMAR GOEL)
JUDGE

May 01, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**